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HOUSE BILL NO. 524

Offered January 10, 2024

Prefiled January 8, 2024

A BILL to amend and reenact §§ 62.1-44.15:80 and 62.1-44.15:81 of the Code of Virginia, relating to permit applications for natural gas pipelines; State Water Control Law.

Patrons—Laufer, Clark, Henson, Hope, Rasoul, Shin and Simon

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:80 and 62.1-44.15:81 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.15:80. Findings and purpose.

The General Assembly determines and finds that to comply with § 401 of the federal Clean Water Act (33 U.S.C. § 1341), any applicant for a federal license or permit to conduct any activity that may result in any discharge into navigable waters shall provide the federal licensing or permitting authority with a certification from the state in which the discharge originates or will originate certifying that any such discharge will comply with applicable provisions of the Clean Water Act. The General Assembly determines and finds that the Virginia Water Protection Permit program has proven to be sufficient to evaluate and, when necessary, mitigate potential water quality impacts for most federally permitted projects. Virginia Water Protection Permit coverage addresses the impacts caused to wetlands and streams by excavating in a wetland, draining or significantly altering wetland acreage or function, filling or dumping in a stream or wetland, or permanently flooding or impounding a wetland area or stream. However, the conditions and requirements of a Virginia Water Protection Permit do not cover activities in upland areas, outside of wetlands and streams, that may result in a discharge to state waters. The General Assembly determines and finds that for construction of natural gas transmission pipelines greater than 36 of at least 24 inches inside diameter that are subject to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)), there may be activities in upland areas that may have the potential to affect water quality but that do not fall within the scope of the Virginia Water Protection Permit program. Information related to such impacts would not be contained in the Joint Permit Application utilized to determine permit conditions for a Virginia Water Protection Permit. The General Assembly determines and finds that issuance of a Virginia Water Protection Permit and a certification issued pursuant to this article shall together constitute the certification required under § 401 of the Clean Water Act for natural gas transmission pipelines greater than 36 of at least 24 inches inside diameter that are subject to § 7c of the Natural Gas Act.

§ 62.1-44.15:81. Application and preparation of draft certification conditions.

A. Any applicant for a federal license or permit for a natural gas transmission pipeline greater than 36 of at least 24 inches inside diameter that is subject to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) shall submit a separate application, at the same time the Joint Permit Application is submitted, to the Department containing a description of all activities that will occur in upland areas, including activities in or related to (i) slopes with a grade greater than 15 percent; (ii) karst geology features, including sinkholes and underground springs; (iii) proximity to sensitive streams and wetlands identified by the Department of Conservation and Recreation or the Department of Wildlife Resources; (iv) seasonally high water tables; (v) water impoundment structures and reservoirs; and (vi) areas with highly erodible soils, low pH, and acid sulfate soils. Concurrently with the Joint Permit Application, the applicant shall also submit a detailed erosion and sediment control plan and stormwater management plan subject to Department review and approval.

B. After receipt of an application in accordance with subsection A, the Department shall issue a request for information about how the erosion and sediment control plan and stormwater management plan will address activities in or related to the upland areas identified in subsection A. The response to such request shall include the specific strategies and best management practices that will be utilized by the applicant to address challenges associated with each area type and an explanation of how such strategies and best management practices will ensure compliance with water quality standards.

C. At any time during the review of the application, but prior to issuing a certification pursuant to this article, the Department may issue an information request to the applicant for any relevant additional information necessary to determine (i) if any activities related to the applicant's project in upland areas are likely to result in a discharge to state waters and (ii) how the applicant proposes to minimize water quality impacts to the maximum extent practicable to protect water quality. The information request shall provide a reasonable amount of time for the applicant to respond.

D. The Department shall review the information contained in the application, the response to the

59 information request in subsection B, and any additional information obtained through any information
60 requests issued pursuant to subsection C to determine if any activities described in the application or in any
61 additional information requests (i) are likely to result in a discharge to state waters with the potential to
62 adversely impact water quality and (ii) will not be addressed by the Virginia Water Protection Permit issued
63 for the activity pursuant to Article 2.2 (§ 62.1-44.15:20 et seq.). The Department of Wildlife Resources, the
64 Department of Conservation and Recreation, the Department of Health, and the Department of Agriculture
65 and Consumer Services shall consult with the Department during the review of the application and any
66 additional information obtained through any information requests issued pursuant to subsection B or C.
67 Following the conclusion of its review, the Department shall develop a draft certification or denial. A draft
68 certification, including (i) any additional conditions for activities in upland areas necessary to protect water
69 quality and (ii) a condition that the applicant shall not commence land-disturbing activity prior to approval by
70 the Department of the erosion and sediment control plan and stormwater management plan required pursuant
71 to subsection E, shall be noticed for public comment and potential issuance by the Department. The
72 Department shall make the information contained in the application and any additional information obtained
73 through any information requests issued pursuant to subsection B or C available to the public.

74 E. Notwithstanding any applicable annual standards and specifications for erosion and sediment control or
75 stormwater management pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.4 (§ 62.1-44.15:51 et seq.), the
76 applicant shall not commence land-disturbing activity prior to resolution of any unresolved issues identified
77 in subsection B to the satisfaction of the Department and approval by the Department of an erosion and
78 sediment control plan and stormwater management plan in accordance with applicable regulations. The
79 Department shall act on any plan submittal within 60 days after initial submittal of a completed plan to the
80 Department. The Department may issue either approval or disapproval and shall provide written rationale for
81 its decision. The Department shall act on any plan that has been previously disapproved within 30 days after
82 the plan has been revised and resubmitted for approval.

83 F. No action by either the Department or the Board on a certification pursuant to this article shall alter the
84 siting determination made through Federal Energy Regulatory Commission or State Corporation Commission
85 approval.

86 G. The Department shall assess an administrative charge to the applicant to cover the direct costs of
87 services rendered associated with its responsibilities pursuant to this section.

88 H. Neither the Department nor the Board shall expressly waive certification of a natural gas transmission
89 pipeline of ~~greater than 36~~ *at least 24* inches inside diameter under § 401 of the federal Clean Water Act (33
90 U.S.C. § 1341). The Department or the Board shall act on any certification request within a reasonable period
91 of time pursuant to federal law. Nothing in this section shall be construed to prohibit the Department or the
92 Board from taking action to deny a certification in accordance with the provisions of § 401 of the federal
93 Clean Water Act (33 U.S.C. § 1341).

94 **2. That the provisions of Article 2.6 (§ 62.1-44.15:81 et seq.) of Chapter 3.1 of Title 62.1 of the Code of**
95 **Virginia, as amended by this act, shall apply to any natural gas transmission pipeline project of at least**
96 **24 inches inside diameter that is subject to a certificate of public convenience and necessity under § 7c**
97 **of the federal Natural Gas Act (15 U.S.C. § 717f(c)) and that has not commenced construction by July**
98 **1, 2024, notwithstanding any certification previously issued or waived by the Department of**
99 **Environmental Quality or the State Water Control Board.**